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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/630,897 | 07/31/2003 | John L. Waddell JR. | WADDELL 1 | 9607 |

1444 7590 02/25/2005

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| EXAMINER |
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JOHNSON, STEPHEN

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| ART UNIT | PAPER NUMBER |
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3641

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,897

Applicant(s)

WADDELL ET AL.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-10 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/31/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant's election with traverse of species A (directed to an assembly for attenuating shock waves that includes a shock attenuating material that is perlite) in the reply filed on 1/25/2005 is acknowledged. The traversal is on several ground(s). (1) It is argued the species should be recombined because all species can be searched in a single application without serious burden. This is not convincing for a number of reasons. First, it is a conclusion that is stated absent any evidence to support it. Further, since the search for this application will use text searching techniques, each different search associated with each of the different embodiments will have different search results. Additional searches require additional time to examine each embodiment. Additional searches will also result in additional art to be reviewed associated with the additional claims associated with each additional embodiment. All of these additions add to the time that must be allotted to examine the case. In view of the fact that the examiner has only a limited amount of time to process each application, it seems in the best interest of both the applicant and the Office that enough time be given such that a quality examination can be preformed. (2) With regard to the argument that of each of the different species are prima facie non-obvious from one another, this once again seems to be a conclusion drawn absent an analysis of any supporting evidence. If applicant considers each of the different species to obvious over the other, evidence should be provided to support this position and/or applicant could argue that each of the different species are not patentably distinct from each other. Note that such an argument could be used as evidence during the prosecution of the case.

For all of the above reason, the requirement is still deemed proper and is therefore made FINAL.

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Claims 3-4 and 6 are withdrawn from consideration as being directed to non-elected species. Claims 1-2, 5, and 7-10 read on the elected species and an action on these claims follows.

2. The drawings are objected to because numerical indicator 10 has not been illustrated. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because numerical indicator 12 (see fig. 2) lacks a written description. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

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should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the water-impermeable cover (see claim 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application as originally filed does not support the claim language directed to "the assembly is covered with a water-impermeable material".

7. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The application as originally filed does not support the claim language directed to "the assembly is covered with a water-impermeable material".

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 5, 7-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Groves.

Groves discloses an assembly for attenuating shock waves comprising:

- | | |
|--|-------------------------|
| a) 2 flexible sheets; | 17, 18 |
| b) a plurality of seems; | adjacent 24 |
| c) a plurality of cells or recess; | contains 15, 21 |
| d) a shock wave attenuating material; and | 15, 21 |
| e) a covering of water impermeable material. | 17 or 18 (outer layers) |

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groves in view of Andersen et al..

Groves applies as previously recited. However, undisclosed is a shock attenuating material that is perlite. Andersen et al. teach a shock attenuating material that is perlite (see claim 20). Applicant is substituting one shock wave attenuating material for another in an analogous art setting as explicitly encouraged by the secondary reference (see Andersen et al. (claim 20)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Andersen et al. to the Groves assembly and have a shock wave attenuating assembly with a different type of shock wave attenuating material.

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12. Claims 1, 5, and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfistershammer.

Pfistershammer discloses an assembly for attenuating shock waves comprising:

- a) 2 flexible sheets; 19, 19', 19"
- b) a plurality of seems; see fig. 10
- c) a plurality of cells or recess; contains 22
- d) a shock wave attenuating material; 22
- e) a covering of water impermeable material; and 22
- f) flexible sheets that are water-impermeable. col. 5, lines 65-69

13. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterweck et al..

Butterweck et al. disclose an assembly for attenuating shock waves comprising:

- a) 2 flexible sheets; 6
- b) a plurality of seems; see fig. 4
- c) a plurality of cells or recess; see figs. 3, 4
- d) a shock wave attenuating material; and 4
- e) flexible sheets that are water-impermeable. col. 1, lines 43-45

14. Claims 1-2, 5, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Symons.

Symons discloses an assembly for attenuating shock waves comprising:

- a) 2 flexible sheets; see figs. 4, 7, or 9
- b) a plurality of seems; see figs. 4, 7, or 9

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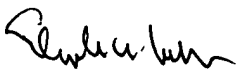
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|---|---------------------|
| c) a plurality of cells or recess; | see figs. 6 or 8 |
| d) a shock wave attenuating material (perlite); and | col. 5, lines 12-20 |
| e) flexible sheets that are water-impermeable. | col. 4, lines 54-68 |

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Snedeker et al., Richards et al., Bouillard, and Cappa disclose other state of the art shock wave attenuating arrangements.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
February 8, 2005